

Internal Revenue Service
memorandum

CC:TL-N-8056-87

Br2:WDHussey

date: JUL 13 1987

to: Assistant District Counsel, Washington, D.C. CC:WAS
Attn: Darrel N. Knudtson

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

This responds to your memorandum of May 28, 1987, asking our views whether the Government should pay the sum of \$60.00 in settlement of the petitioners' request for litigation costs. This will confirm oral advice rendered to your office on June 19, 1987.

Petitioners filed suit on [REDACTED]. It is our understanding that a stipulated decision showing no deficiency will be signed by petitioners for submission to the Tax Court once the litigation costs issue is settled in their favor.

ISSUE

Whether to pay the Tax Court filing fee claimed by petitioners as an award of reasonable litigation costs pursuant to I.R.C. § 7430 when the Service erred in issuing a statutory notice of deficiency. 7430.00-00.

CONCLUSION

We concur in your recommendation to pay the \$60.00 filing fee, given the administrative errors made and the small size of the claim. The decision document should state that the parties have agreed to an award of litigation costs pursuant to section 7430 in the amount of \$60.00.

FACTS

The petitioners, [REDACTED] and [REDACTED], filed their joint income tax return for [REDACTED] on [REDACTED]. The Philadelphia Service Center contacted them on [REDACTED], after receiving information that they had failed to report dividend and interest income. Petitioners responded on [REDACTED], agreeing to an assessment of \$[REDACTED] in income tax, which they paid.

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However, the Service Center reexamined petitioners' liability and issued a report on [REDACTED]. It increased petitioners' gross income in the amount of the dividend and interest income which they had already conceded and raised additional omissions of dividend income, resulting in a total income tax liability of \$[REDACTED]. On [REDACTED] petitioners requested a conference at the Washington, D.C. Internal Revenue Service office to resolve the matter. A conference was not granted, nor was a 30-day letter notice of proposed deficiency issued.

On [REDACTED], a statutory notice of deficiency was issued showing a liability of \$[REDACTED]. District Counsel did not participate in the review or issuance of the notice of deficiency. On [REDACTED], petitioners wrote to the Service trying to explain that errors had been made. Also on [REDACTED], petitioners filed their petition with the Tax Court.

On [REDACTED], petitioners reached a settlement with the Appeals Division. Petitioners agreed to the propriety of the \$[REDACTED] payment made in [REDACTED], though the omitted dividend and interest income was offset by Schedule A deductions which they had previously failed to claim. This resulted in an overpayment of \$[REDACTED]. The Service conceded all the adjustments in the statutory notice of deficiency.

Petitioners seek an award of litigation costs pursuant to section 7430, in the amount of the \$60.00 Tax Court filing fee.

DISCUSSION

Section 7430 provides that reasonable litigation costs may be awarded a taxpayer. He must:

(1) substantially prevail with respect to the amount in controversy or the most significant issue or set of issues presented, section 7430(c)(2)(A)(ii)(I) & (II);

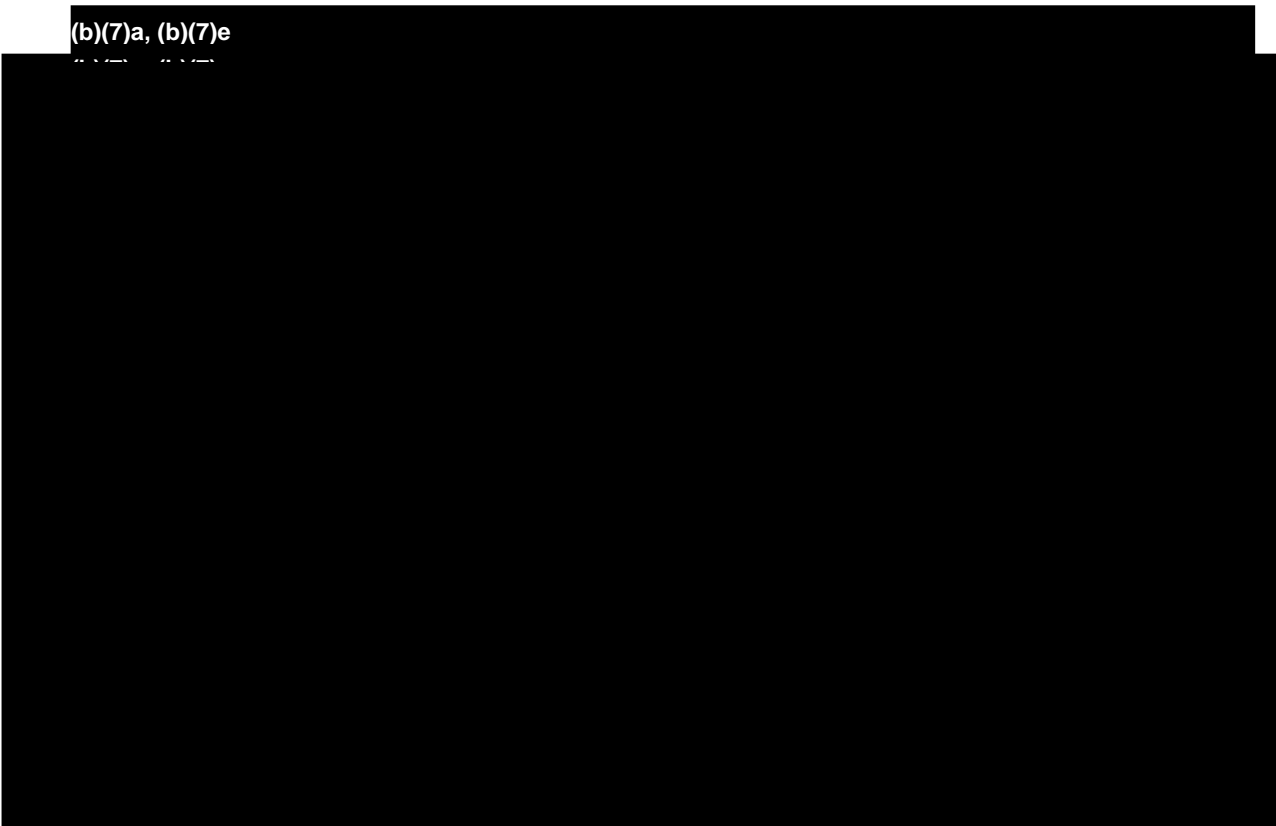
(2) exhaust the administrative remedies available within the Service, section 7430(b)(1); and

(3) establish that the position of the United States in the civil proceeding was not substantially justified, section 7430(c)(2)(A)(i).

Prevailing as to the amount in controversy or the most significant issue are alternative grounds for concluding that the taxpayer has substantially prevailed. Phillips v. Commissioner, 88 T.C. No. 26 (March 5, 1987). The Service has conceded the entire amount of the deficiency determined in the statutory notice. The Service's concession is an acknowledgment that the determination of liability for dividend and interest income made against petitioners in the statutory notice of deficiency was erroneous. Petitioners have satisfied the conditions for substantially prevailing.

Petitioners also are deemed to have exhausted their administrative remedies. A taxpayer is considered to do so in the case of a petition to the Tax Court when he does not receive a 30-day notice of proposed deficiency and does not refuse to participate in an Appeals conference while the case is docketed. Treas. Reg. § 1.7430-1(f)(2). Petitioners did not receive a 30-day letter but did attend an Appeals conference while docketed.

(b)(7)a, (b)(7)e




We concur in your recommendation to pay the \$60.00 Tax Court filing fee incurred by petitioners as an award of litigation costs to which they are entitled pursuant to section 7430. The decision documents should state that the parties have agreed to such an award.

If you have any further questions, please contact William D. Hussey of this office at 566-3520.

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